

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC., WEST VIRGINIA
HIGHLANDS CONSERVANCY, INC.,
and SIERRA CLUB,**

Plaintiffs,

v.

CIVIL ACTION NO. 2:12-cv-3750

FOLA COAL COMPANY, LLC,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR CIVIL
PENALTIES**

INTRODUCTION

1. This is an action for declaratory judgment and mandatory injunctive relief and for civil penalties against Defendant for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (hereinafter “the Clean Water Act” or “the CWA”), and the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. (hereinafter “SMCRA”).

2. As detailed below, Plaintiffs allege that Defendant has discharged and continues to discharge selenium—a pollutant designated as toxic by the U.S. Environmental Protection Agency, 40 C.F.R. § 401.15—into waters of the United States in persistent violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and of the conditions and limitations of two West Virginia/National Pollution Discharge Elimination System (“WV/NPDES”) Permits issued to Defendant by the State of West Virginia pursuant to Section 402 of the Clean Water Act.

3. Plaintiffs further allege that Defendant’s discharges of unlawful quantities of

selenium into the waters adjacent to its mine sites violate the performance standards under SMCRA and the terms and conditions of its surface mining permits.

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 33 U.S.C. § 1365 (Clean Water Act citizen suit provision), and 30 U.S.C. § 1270 (SMCRA citizen suit provision).

5. On May 25, 2012, Plaintiffs gave notice of the violations and their intent to file suit to Defendants, the United States Environmental Protection Agency (“EPA”), the United States Department of Interior, the Office of Surface Mining, Reclamation, and Enforcement (“OSMRE”), and the West Virginia Department of Environmental Protection (“WVDEP”), as required by Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and Section 520(b)(1)(A) of SMCRA, 30 U.S.C. § 1270(b)(1)(A).

6. More than sixty days have passed since notice was served. EPA, OSMRE, and/or WVDEP have not commenced and/or diligently prosecuted a civil or criminal action to redress the violations. Moreover, neither EPA nor WVDEP commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or a comparable state law to redress the violations prior to the issuance of the May 25, 2012 notice letter.

7. Venue in this District is proper pursuant to 33 U.S.C. § 1365(c)(1) because the sources of the Clean Water Act violations are located in this District, and pursuant to 30 U.S.C. § 1270(c) because the coal mining operations complained of are located in this District.

PARTIES

8. Fola Coal Company, LLC (“Fola”), is a West Virginia limited liability company doing business in, among other places, Clay County, West Virginia.

9. Fola is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Section 701(19) of SMCRA, 30 U.S.C. § 1291(19).

10. At all relevant times, Fola has owned and operated the Surface Mine No. 4A in Clay County, West Virginia, which is regulated by Surface Mining Permit S200502 and which discharges pollutants from various outfalls that are subject to the effluent limitations and terms and conditions of WV/NPDES Permit WV1013815.

11. At all relevant times, Fola has owned and operated the Cannel Coal Point Removal in Clay County, West Virginia, which is regulated by Surface Mining Permit S200605 and which discharges pollutants from various outfalls that are subject to the effluent limitations and terms and conditions of WV/NPDES Permit WV1013815.

12. At all relevant times, Fola has owned and operated the Cannel Coal Surface Mine in Clay County, West Virginia, which is regulated by Surface Mining Permit S200307 and which discharges pollutants from various outfalls that are subject to the effluent limitations and terms and conditions of WV/NPDES Permit WV1013815.

13. At all relevant times, Fola has owned and operated the Bullpen Fork Surface Mine in Clay County, which is regulated by Surface Mining Permit S200798 and which discharges pollutants from various outfalls that are subject to the effluent limitations and terms and conditions of WV/NPDES Permit WV1013815.

14. Plaintiff Ohio Valley Environmental Coalition (hereinafter “OVEC”) is a nonprofit organization incorporated in Ohio. Its principal place of business is in Huntington, West Virginia. It has approximately 1,500 members. Its mission is to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing, coalition building, leadership development, and media outreach. OVEC has focused on water quality issues and is a leading

source of information about water pollution in West Virginia.

15. Plaintiff West Virginia Highlands Conservancy, Inc., (hereinafter “WVHC”) is a nonprofit organization incorporated in West Virginia. It has approximately 2,000 members. It works for the conservation and wise management of West Virginia’s natural resources.

16. Plaintiff Sierra Club is a nonprofit corporation incorporated in California, with more than 600,000 members and supporters nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s concerns encompass the exploration, enjoyment, and protection of surface waters in West Virginia.

17. Plaintiffs’ members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Defendant’s unlawful discharges of selenium. Plaintiffs’ members fish, swim, hike near, observe wildlife in, photograph, and/or otherwise use the waters affected by Defendant’s discharges and are harmed by the high levels of selenium that Defendant is discharging in violation of its permits. Plaintiffs’ members refrain from those activities and/or enjoy them less because of Defendant’s unlawful discharges. Plaintiffs’ members are also very concerned about the impacts of pollution from Defendant’s discharges on their friends and neighbors and on local wildlife. If Defendant’s unlawful discharges ceased, the harm to the interests of Plaintiffs’ members could be redressed. Injunctions and/or civil penalties would redress Plaintiffs’ members’ injuries by preventing and/or deterring future violations of the conditions of Defendant’s permits.

18. At all relevant times, Plaintiffs were and are “persons” as that term is defined by

the CWA, 33 U.S.C. § 1362(5), and SMCRA, 30 U.S.C. § 1291(19).

STATUTORY AND REGULATORY FRAMEWORK

Clean Water Act

19. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into waters of the United States except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System (“NPDES”) Permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

20. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority may issue a NPDES Permit that authorizes the discharge of any pollutant directly into waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

21. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to prescribe conditions for NPDES permits to ensure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and other such requirements as the Administrator deems appropriate.

22. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

23. Section 303(a) of the CWA, 33 U.S.C. § 1313(a), requires that states adopt ambient water quality standards and establish water quality criteria for particular water bodies that will protect the designated uses of the water. When technology-based effluent limitations

are insufficient to keep receiving waters within those levels, the permit must include stricter water quality based effluent limits (“WQBELs”) that reflect water quality standards and criteria. 33 U.S.C. § 1311(b)(1)(C).

24. At all times relevant to this complaint, the State of West Virginia has been authorized by EPA to administer a NPDES program for regulating the discharges of pollutants into the waters of West Virginia. Permits issued under this program are known as “WV/NPDES” permits.

25. Holders of WV/NPDES Permits are required to monitor their discharges and report their average monthly discharges and maximum daily discharges on a quarterly basis. Those reports are called “Discharge Monitoring Reports,” or “DMRs.”

26. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), authorizes any “citizen” to “commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter . . .”

27. Section 505(f) of the CWA, 33 U.S.C. § 1365(f), defines an “effluent standard or limitation under this chapter,” for purposes of the citizen suit provision in Section 505(a) of the CWA, 33 U.S.C. § 1365(a), to mean, among other things, an unlawful act under Section 301(a), 33 U.S.C. § 1311(a), of the CWA, a WQBEL, and “a permit or condition thereof issued” under Section 402, 33 U.S.C. § 1342, of the CWA.

28. In an action brought under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), the district court has jurisdiction to order the defendant or defendants to comply with the CWA and to assess civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1365(d). See 33 U.S.C. § 1365(a).

29. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or

limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation.

30. Pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the court may assess a civil penalty of \$32,500 per day for each violation that occurred between March 15, 2004, and January 12, 2009, and a civil penalty of \$37,500 per day for each violation that occurred after January 12, 2009. See 40 C.F.R. § 19.4.

31. Under Section 505(d) of the CWA, 33 U.S.C § 1365(d), the court “may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.”

Surface Mining Control and Reclamation Act

32. Section 506 of SMCRA, 30 U.S.C. § 1256, prohibits any person from engaging in or carrying out surface coal mining operations without first obtaining a permit from the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) or from an approved state regulatory authority.

33. At all relevant times, the State of West Virginia has administered an approved surface mining regulatory program. See 30 C.F.R. § 948.10.

34. The legislative rules promulgated under the West Virginia Surface Coal Mining and Reclamation Act (“WVSCMRA”) provide that, as a general condition of all surface mining permits issued under the WVSCMRA, the permittee must comply with all applicable performance standards. 38 C.S.R. § 2-3.33.c.

35. Among the performance standards mandated by SMCRA and the WVSCMRA is that mining activities must be conducted in such a manner so as to “prevent material damage to the hydrologic balance outside the permit area.” 30 C.F.R. §§ 816.41(a) & 817.41(a); 38 C.S.R.

§ 2-14.5.

36. Another performance standard mandated by SMCRA and the WVSCMRA is that “[d]ischarge from areas disturbed by . . . mining shall not violate effluent limitations or cause a violation of applicable water quality standards.” 30 C.F.R. §§ 816.42 & 817.42; 38 C.S.R. § 2-14.5.b.

37. SMCRA and the WVSCMRA also include a performance standard requiring that “[if] drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and § 816.42, the operator shall use and maintain the necessary water-treatment facilities or water quality controls.” 30 C.F.R. § 816.41(d)(1); see also 38 C.S.R. § 2-14.5.c (“Adequate facilities shall be installed, operated and maintained using the best technology currently available in accordance with the approved preplan to treat any water discharged from the permit area so that it complies with the requirements of subdivision 14.5.b of this subsection.”).

38. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), authorizes any person adversely affected to bring an action in federal court to compel compliance with SMCRA against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to [SMCRA].”

39. Section 520(d) of SMCRA, 30 U.S.C. § 1270(d), authorizes the Court to award the costs of litigation, including attorney fees and expert witness fees, “to any party, whenever the court determines such an award is appropriate.”

40. WVDEP is the agency in the State of West Virginia that administers that State’s CWA and SMCRA programs, and issues WV/NPDES Permits and WVSCMRA Permits.

FACTS

WV/NPDES Permit WV1013815 and WV1017934

41. At all relevant times, Fola has held WV/NPDES Permit WV1013815 to regulate water pollution from its Surface Mine No. 4A, Cannel Coal Point Removal, and Cannel Coal Surface Mine (among others).

42. At all relevant times, Fola has held WVSCMRA Permit S200502 for its Surface Mine No. 4A.

43. At all relevant times, Fola has held WVSCMRA Permit S200605 for its Cannel Coal Point Removal operation.

44. At all relevant times, Fola has held WVSCMRA Permit S200307 for its Cannel Coal Surface Mine.

45. Outfall 022 regulated by WV/NPDES Permit WV1013815 discharges into Right Fork of Leatherwood Creek of Leatherwood Creek of the Elk River. Outfall 023 regulated by WV/NPDES Permit WV1013815 discharges into Rocklick Fork of Leatherwood Creek of the Elk River. Outfall 027 regulated by WV/NPDES Permit WV1013815 discharges into Cannel Coal Hollow of the Right Fork of Leatherwood Creek of the Elk River. All of those waterways are navigable waters of the United States.

46. Outfalls 022, 023, and 027 regulated by WV/NPDES Permit WV1013815 discharge pollution and runoff from Fola's Surface Mine No. 4A. On information and belief, Plaintiffs allege that Outfall 027 also discharges pollution and runoff from Fola's Cannel Coal Point Removal and Cannel Coal Surface Mine.

47. At all relevant times, Fola has held WV/NPDES Permit WV1017934 to regulate water pollution from its Bullpen Fork Surface Mine.

48. At all relevant times, Fola has held WVSCMRA Permit S200798 for its Bullpen

Fork Surface Mine.

49. Outfall 009 regulated by WV/NPDES Permit WV1017934 discharges into Bullpen Fork of Right Fork of Leatherwood Creek of the Elk River. All of those waterways are navigable waters of the United States.

50. WV/NPDES Permits WV1013815 and WV1017934 include conditions that “[t]he discharge or discharges covered by [this] WV/NPDES permit are to be of such quality so as not to cause a violation of applicable water quality standards promulgated by 47 CSR 2.” 47 C.S.R. § 30-5.1(f).

51. West Virginia has established specific numeric water quality standards for selenium in order to protect the biological integrity of streams and to maintain aquatic life. Those standards include a chronic criterion of 5 µg/l and an acute criterion of 20 µg/l for selenium.

52. Reports submitted by Fola under the terms of WV/NPDES Permit WV1013815 reveal that the selenium concentrations in Cannel Coal Hollow, Leatherwood Creek, and the Right Fork of Leatherwood Creek downstream of Fola’s Surface Mine No. 4A, Cannel Coal Point Removal, and Cannel Coal Surface Mine have exceeded the chronic and acute numeric selenium water quality standards on multiple occasions between July 2008 and March 2012.

53. WVDEP’s Watershed Assessment Branch sampled the water quality in the Right Fork of Leatherwood Creek downstream of Defendant’s mining operations on or about August 9, 2011. That sampling effort revealed a selenium concentration in the Right Fork of Leatherwood Creek of 7.3 µg/l.

54. An inspection conducted by WVDEP at the request of Plaintiffs confirmed that Outfalls 022, 023, and 027 of WV/NPDES Permit WV1013815 and Outfall 009 of WV/NPDES Permit WV1017934 have caused and/or contributed to selenium water quality standard

violations in Bullpen Fork, Cannel Coal Hollow, Leatherwood Creek, the Right Fork of Leatherwood Creek, and Rocklick Fork.

55. Appendix A to this Complaint sets forth the instances where Fola has caused in-stream selenium water quality standards violations in Cannel Coal Hollow, Leatherwood Creek, and the Right Fork of Leatherwood Creek as measured at the in-stream sampling locations prescribed by WV/NPDES Permit WV1013815.

56. Appendix B to this Complaint sets forth the instances where Fola has caused in-stream selenium water quality standards violations in Bullpen Fork, the Right Fork of Leatherwood Creek, Cannel Coal Hollow, and Rocklick Fork as measured during the WVDEP inspection conducted at the request of Plaintiffs.

57. On the basis of Fola's pattern of violations of discharging excess selenium from Outfalls 022, 023, and 027 regulated by WV/NPDES Permit Number WV1013815 and Outfall 009 of WV/NPDES Permit Number WV1017934 and the absence of any evidence of any meaningful efforts by Fola to eradicate the cause of the violations, Plaintiffs allege that Fola is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

Plaintiffs' 60-Day Notice

58. Plaintiffs sent a notice of intent letter (hereinafter, "NOI"), postmarked on May 25, 2012, to Defendant, notifying it that its discharges of selenium and its violations of the terms and conditions of WV/NPDES Permits WV1013815 and WV1017934 violate the Clean Water Act and SMCRA.

59. The NOI also notified Defendant of Plaintiffs' intent to sue Defendant for those violations at the end of the 60-day period required by statute.

60. The NOI was sent by certified mail, return receipt requested, to the following persons: N.J. Deiuliis, Manager, Fola Coal Company, LLC; Secretary Randy Huffman,

WVDEP; Shawn M. Garvin, Regional Administrator of EPA Region III; Lisa P. Jackson, Administrator of EPA; Ken Salazar, Secretary of the United States Department of Interior; Joseph Pizarchik, Director of the Office of Surface Mining Reclamation and Enforcement; CT Corporation System, Registered Agent for Fola Coal Company, LLC. The NOI was also sent to the Regional Director for the Appalachian Region of the Office of Surface Mining Enforcement and Reclamation via first class mail, postage prepaid. All certified mail recipients identified above received the NOI by June 1, 2012.

FIRST CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1013815)

61. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 60 supra.

62. Defendant's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

63. The condition of WV/NPDES Permit Number WV1013815 that provides that the “[t]he discharge or discharges covered by [this] WV/NPDES are to be of such quality so as not to cause a violation of applicable water quality standards promulgated by 47 CSR 2” is an enforceable “effluent standard[] or limitation[]” for purposes of Section 505(a)(1) of the Clean Water Act because it is a condition of a permit issued under Section 402 of the Act. 33 U.S.C. § 1365(f).

64. The West Virginia selenium water quality standards of 5 µg/l chronic and 20 µg/l acute are applicable water quality standards promulgated by 47 C.S.R. § 2 for purposes of the permit condition described in the above paragraph.

65. As established by its discharge monitoring reports and by sampling that occurred

during WVDEP's inspection of Defendant's operations at the request of Plaintiffs, Defendant caused violations of the chronic and acute selenium water quality standards in Cannel Coal Hollow, Leatherwood Creek, the Right Fork of Leatherwood Creek, and Rocklick Fork of Leatherwood Creek on multiple occasions between July 2008 and May 2012.

66. Accordingly, Defendant is violating the condition of WV/NPDES Permit WV1013815 that prohibits discharges that cause water quality standards violations.

67. Unless enjoined, Defendant will remain in continuing violation of the Clean Water Act.

68. On information and belief, Plaintiffs allege that Defendant is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the condition of its permit prohibiting discharges that cause water quality standards violations because Defendant has taken no meaningful action to eradicate the underlying cause of the violations.

69. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant is liable for civil penalties of up to \$32,500 per day of violation for its violations of the terms and conditions of WV/NPDES Permit Number WV1013815 that occurred between March 15, 2004, and January 12, 2009, and up to \$37,500 per day of violation for each violation that occurred after January 12, 2009.

SECOND CLAIM FOR RELIEF

(SMCRA Violations Related to the Condition of WV/NPDES Permit Number WV1013815
Prohibiting Water Quality Standards Violations)

70. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 60 supra.

71. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

72. As discussed above, federal and state regulations under SMCRA include performance standards that prohibit surface mining operations that cause violations of water quality standards.

73. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

74. WV/NPDES Permit Number WV1013815 regulates Fola's discharges from (among others) its Surface Mine No. 4A (WVSCMRA Permit No. S200502), Cannel Coal Point Removal (WVSCMRA Permit Number No. S200605), and Cannel Coal Surface Mine (WVSCMRA Permit Number S200307).

75. Defendant's discharges from Outfall 022 from the Surface Mine No. 4A have caused violations of the chronic and/or acute selenium water quality standards in Leatherwood Creek and the Right Fork of Leatherwood Creek on multiple occasions between July 2008 and May 2012.

76. Defendant's discharges from Outfall 023 from the Surface Mine No. 4A have caused violations of the chronic and/or acute selenium water quality standards in Rocklick Fork and Leatherwood Creek on multiple occasions between July 2008 and May 2012.

77. Defendant's discharges from Outfall 027 from the Surface Mine No. 4A, Cannel Coal Point Removal, and the Cannel Coal Surface Mine have caused violations of the chronic and/or acute selenium water quality standards in Cannel Coal Hollow, the Right Fork of Leatherwood Creek, and Leatherwood Creek on multiple occasions between July 2008 and May 2012.

78. Consequently, Defendant has committed one or more violations of the performance standards incorporated in the regulations under SMCRA and the WVSCMRA.

79. Because those performance standards are permit conditions, Defendant is also in

violation of the terms and conditions of WVSCMRA Permits S200502, S200605, and S200307.

80. Unless enjoined, Defendant will remain in ongoing and continuing violation of those permits, SMCRA, and the WVSCMRA.

81. On information and belief, Plaintiffs allege that Defendant is in continuing and/or intermittent violation of SMCRA, WVSCMRA, and WVSCMRA Permits S200502, S200605, and S200307 as a result of its violations of water quality standards and of the condition of WV/NPDES Permit Number WV1013815 that prohibits discharges that cause violations of water quality standards because Defendant has taken no meaningful action to eradicate the underlying cause of the violations.

THIRD CLAIM FOR RELIEF

(SMCRA Violations Related to Failure to Install Adequate Treatment Facilities at the Fola 4A Surface Mine, the Cannel Coal Point Removal, and the Cannel Coal Surface Mine)

82. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 60 supra.

83. As discussed above, WVSCMRA performance standards at 38 C.S.R. § 2-14.5.c require the installation, operation, and maintenance of adequate treatment facilities when necessary to prevent discharges that violate state or federal law.

84. As described above, Defendant's discharges of selenium have resulted in numerous violations of the Clean Water Act, SMCRA, the WVSCMRA, and WVSCMRA Permits S200502, S200605, and S200307, demonstrating the company's failure to install, operate, and maintain adequate treatment facilities.

85. Consequently, Defendant has violated the WVSCMRA standards at 38 C.S.R. § 2-14.5.c.

86. Because those performance standards are permit conditions, Defendant is also in violation of the terms and conditions of WVSCMRA Permits S200502, S200605, and S200307.

87. On information and belief, Plaintiffs allege that Defendant is in continuing violation of SMCRA, the WVSCMRA, and WVSCMRA Permits S200502, S200605, and S200307 as a result of its failure to install, operate, and maintain adequate treatment facilities.

88. Unless enjoined, Defendant will remain in continuing violation of SMCRA, the WVSCMRA, and WVSCMRA Permits S200502, S200605, and S200307.

FOURTH CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1017934)

89. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 60 supra.

90. Defendant's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

91. The condition of WV/NPDES Permit Number WV1017934 that provides that the “[t]he discharge or discharges covered by [this] WV/NPDES are to be of such quality so as not to cause a violation of applicable water quality standards promulgated by 47 CSR 2” is an enforceable “effluent standard[] or limitation[]” for purposes of Section 505(a)(1) of the Clean Water Act because it is a condition of a permit issued under Section 402 of the Act. 33 U.S.C. § 1365(f).

92. The West Virginia selenium water quality standards of 5 µg/l chronic and 20 µg/l acute are applicable water quality standards promulgated by 47 C.S.R. § 2 for purposes of the permit condition described in the above paragraph.

93. As established by its discharge monitoring reports and by sampling that occurred during WVDEP's inspection of Defendant's operations at the request of Plaintiffs, Defendant caused violations of the chronic and acute selenium water quality standards in Bullpen Fork of

Right Fork of Leatherwood Creek, Right Fork of Leatherwood Creek, and Leatherwood Creek on multiple occasions between July 2008 and May 2012.

94. Accordingly, Defendant is violating the condition of WV/NPDES Permit WV1017934 that prohibits discharges that cause water quality standards violations.

95. Unless enjoined, Defendant will remain in continuing violation of the Clean Water Act.

96. On information and belief, Plaintiffs allege that Defendant is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the condition of its permit prohibiting discharges that cause water quality standards violations because Defendant has taken no meaningful action to eradicate the underlying cause of the violations.

97. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant is liable for civil penalties of up to \$32,500 per day of violation for its violations of the terms and conditions of WV/NPDES Permit Number WV1017934 that occurred between March 15, 2004, and January 12, 2009, and up to \$37,500 per day of violation for each violation that occurred after January 12, 2009.

FIFTH CLAIM FOR RELIEF

(SMCRA Violations Related to the Condition of WV/NPDES Permit Number WV1017934
Prohibiting Water Quality Standards Violations)

98. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 60 supra.

99. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

100. As discussed above, federal and state regulations under SMCRA include performance standards that prohibit surface mining operations that cause violations of water

quality standards.

101. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

102. WV/NPDES Permit Number WV1017934 regulates Fola's discharges from its Bullpen Fork Surface Mine (WVSCMRA Permit No. S200798).

103. Defendant's discharges from Outfall 009 from the Bullpen Fork Surface Mine have caused violations of the chronic and/or acute selenium water quality standards in Bullpen Fork of Right Fork of Leatherwood Creek, Leatherwood Creek, and the Right Fork of Leatherwood Creek on multiple occasions between July 2008 and May 2012.

104. Consequently, Defendant has committed one or more violations of the performance standards incorporated in the regulations under SMCRA and WVSCMRA.

105. Because those performance standards are permit conditions, Defendant is also in violation of the terms and conditions of WVSCMRA Permit S200798.

106. Unless enjoined, Defendant will remain in ongoing and continuing violation of that permit, SMCRA, and the WVSCMRA.

107. On information and belief, Plaintiffs allege that Defendant is in continuing and/or intermittent violation of SMCRA, the WVSCMRA, and WVSCMRA Permit S200798 as a result of its violations of water quality standards and of the condition of WV/NPDES Permit Number WV1017934 that prohibits discharges that cause violations of water quality standards because Defendant has taken no meaningful action to eradicate the underlying cause of the violations.

SIXTH CLAIM FOR RELIEF

(SMCRA Violations Related to Failure to Install Adequate Treatment Facilities at the Bullpen Fork Surface Mine)

108. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 60 supra.

109. As discussed above, WVSCMRA performance standards at 38 C.S.R. § 2-14.5.c require the installation, operation, and maintenance of adequate treatment facilities when necessary to prevent discharges that violate state or federal law.

110. As described above, Defendant's discharges of selenium have resulted in numerous violations of the Clean Water Act, SMCRA, the WVSCMRA, and WVSCMRA Permit S200798, demonstrating the company's failure to install, operate, and maintain adequate treatment facilities.

111. Consequently, Defendant has violated the WVSCMRA standards at 38 C.S.R. § 2-14.5.c.

112. Because those performance standards are permit conditions, Defendant is also in violation of the terms and conditions of WVSCMRA Permit S200798.

113. On information and belief, Plaintiffs allege that Defendant is in continuing violation of SMCRA, the WVSCMRA, and WVSCMRA Permit S200798 as a result of its failure to install, operate, and maintain adequate treatment facilities.

114. Unless enjoined, Defendant will remain in continuing violation of SMCRA, the WVSCMRA, and WVSCMRA Permit S200798.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this court enter an Order:

(1). Declaring that Defendant has violated and is in continuing violation of the Clean Water Act and SMCRA;

(2). Enjoining Defendant from operating the Surface Mine No. 4A, the Cannel Coal Point Removal, the Cannel Coal Surface Mine, and/or the Bullpen Fork Surface Mine in such a manner as will result in further violations of the conditions of WV/NPDES Permits WV1013815 and/or WV1017934 that prohibit discharges that violate water quality standards;

- (3). Ordering Defendant to comply immediately with all terms and conditions of WV/NPDES Permits WV1013815 and WV1017934;
- (4). Ordering Defendant to comply immediately with all terms and conditions of WVSCMRA Permits S200502, S200605, S200307, and S200798 and all performance standards under SMCRA and the WVSCMRA;
- (5). Ordering Defendants to pay appropriate civil penalties up to \$37,500 per day for each CWA violation;
- (6). Ordering Defendants to conduct monitoring and sampling to determine the environmental effects of their violations, to remedy and repair environmental contamination and/or degradation caused by their violations, and restore the environment to its prior uncontaminated condition;
- (7). Awarding Plaintiffs' attorney and expert witness fees and all other reasonable expenses incurred in pursuit of this action; and
- (8). Granting other such relief as the Court deems just and proper.

Respectfully submitted,

/s/ Derek O. Teaney
DEREK O. TEANEY (W.Va. Bar No. 10223)
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Counsel for Plaintiffs

**APPENDIX A EXCURSIONS ABOVE SELENIUM WATER QUALITY STANDARDS BY
DISCHARGES REGULATED BY WV/NPDES PERMITS WV1013815 AND WV1017934**

INSTREAM MONITORING POINT P-9 (DCCH)

DATE	TYPE	UNITS	MEASURED VALUE
July 2008	Minimum	µg/l	5.59
July 2008	Average	µg/l	5.59
July 2008	Maximum	µg/l	5.59
June 2009	Maximum	µg/l	5.18
July 2009	Minimum	µg/l	3.17
July 2009	Average	µg/l	5.495
July 2009	Maximum	µg/l	7.82
August 2009	Minimum	µg/l	3.94
August 2009	Average	µg/l	5.01
August 2009	Maximum	µg/l	6.08
October 2009	Minimum	µg/l	2.71
October 2009	Average	µg/l	5.22
October 2009	Maximum	µg/l	7.73
December 2009	Minimum	µg/l	4.4
December 2009	Average	µg/l	6.445
December 2009	Maximum	µg/l	8.49
January 2010	Maximum	µg/l	8.86
April 2010	Minimum	µg/l	5.55
April 2010	Average	µg/l	7.825
April 2010	Maximum	µg/l	10.1
May 2010	Minimum	µg/l	5.78
May 2010	Average	µg/l	10.39
May 2010	Maximum	µg/l	15
June 2010	Minimum	µg/l	7.45
June 2010	Average	µg/l	8.55
June 2010	Maximum	µg/l	9.65
July 2010	Maximum	µg/l	5.68
November 2010	Maximum	µg/l	5.57
December 2010	Minimum	µg/l	6.63
December 2010	Average	µg/l	7.775
December 2010	Maximum	µg/l	8.92
January 2011	Minimum	µg/l	5.01
January 2011	Average	µg/l	5.615
January 2011	Maximum	µg/l	6.22
February 2011	Minimum	µg/l	6.6
February 2011	Average	µg/l	7.94
February 2011	Maximum	µg/l	9.28
March 2011	Minimum	µg/l	6.58
March 2011	Average	µg/l	7.185
March 2011	Maximum	µg/l	7.79
April 2011	Minimum	µg/l	10.66
April 2011	Average	µg/l	11.74
April 2011	Maximum	µg/l	12.82
May 2011	Minimum	µg/l	6.83
May 2011	Average	µg/l	10.57
May 2011	Maximum	µg/l	14.31
June 2011	Minimum	µg/l	7.88
June 2011	Average	µg/l	35.465
June 2011	Maximum	µg/l	63.05
July 2011	Minimum	µg/l	6.44
July 2011	Average	µg/l	7.355

July 2011	Maximum	µg/l	8.27
August 2011	Minimum	µg/l	6.42
August 2011	Average	µg/l	6.735
August 2011	Maximum	µg/l	7.05
September 2011	Minimum	µg/l	20.61
September 2011	Average	µg/l	22.79
September 2011	Maximum	µg/l	24.97
October 2011	Minimum	µg/l	6.83
October 2011	Average	µg/l	11.485
October 2011	Maximum	µg/l	16.14
November 2011	Minimum	µg/l	10.9
November 2011	Average	µg/l	25.64
November 2011	Maximum	µg/l	40.38
December 2011	Minimum	µg/l	7.79
December 2011	Average	µg/l	19.735
December 2011	Maximum	µg/l	31.68
January 2012	Minimum	µg/l	22.7
January 2012	Average	µg/l	32.005
January 2012	Maximum	µg/l	41.31
February 2012	Minimum	µg/l	22.16
February 2012	Average	µg/l	24.18
February 2012	Maximum	µg/l	26.2
March 2012	Minimum	µg/l	20.96
March 2012	Average	µg/l	26.73
March 2012	Maximum	µg/l	32.5

INSTREAM MONITORING POINT P-10 (DRFLC)

DATE	TYPE	UNITS	MEASURED VALUE
July 2008	Minimum	µg/l	5.39
July 2008	Average	µg/l	5.39
July 2008	Maximum	µg/l	5.39
December 2008	Minimum	µg/l	9.53
December 2008	Average	µg/l	11.065
December 2008	Maximum	µg/l	12.6
January 2009	Minimum	µg/l	11.5
January 2009	Average	µg/l	12
January 2009	Maximum	µg/l	12.5
February 2009	Minimum	µg/l	8.03
February 2009	Average	µg/l	11.315
February 2009	Maximum	µg/l	14.6
March 2009	Minimum	µg/l	4.59
March 2009	Average	µg/l	5.65
March 2009	Maximum	µg/l	6.69
April 2009	Minimum	µg/l	8.95
April 2009	Average	µg/l	10.225
April 2009	Maximum	µg/l	11.5
May 2009	Minimum	µg/l	7.01
May 2009	Average	µg/l	7.385
May 2009	Maximum	µg/l	7.76
June 2009	Minimum	µg/l	7.24
June 2009	Average	µg/l	7.475
June 2009	Maximum	µg/l	7.68
July 2009	Minimum	µg/l	5.39
July 2009	Average	µg/l	5.645
July 2009	Maximum	µg/l	5.9
August 2009	Minimum	µg/l	6.44

August 2009	Average	µg/l	9.17
August 2009	Maximum	µg/l	11.9
September 2009	Minimum	µg/l	6.85
September 2009	Average	µg/l	7.76
September 2009	Maximum	µg/l	8.67
October 2009	Minimum	µg/l	3.22
October 2009	Average	µg/l	6.66
October 2009	Maximum	µg/l	10.1
November 2009	Maximum	µg/l	6.59
December 2009	Minimum	µg/l	8.61
December 2009	Average	µg/l	10.105
December 2009	Maximum	µg/l	11.6
January 2010	Minimum	µg/l	5.18
January 2010	Average	µg/l	17.89
January 2010	Maximum	µg/l	30.6
February 2010	Minimum	µg/l	9.08
February 2010	Average	µg/l	9.185
February 2010	Maximum	µg/l	9.29
March 2010	Minimum	µg/l	10.5
March 2010	Average	µg/l	10.5
March 2010	Maximum	µg/l	10.5
April 2010	Minimum	µg/l	8.7
April 2010	Average	µg/l	10.85
April 2010	Maximum	µg/l	13
May 2010	Minimum	µg/l	9.09
May 2010	Average	µg/l	11.395
May 2010	Maximum	µg/l	13.7
June 2010	Minimum	µg/l	6.28
June 2010	Average	µg/l	6.815
June 2010	Maximum	µg/l	7.35
August 2010	Maximum	µg/l	5.3
October 2010	Maximum	µg/l	5.74
November 2010	Minimum	µg/l	3.99
November 2010	Average	µg/l	7.11
November 2010	Maximum	µg/l	10.23
December 2010	Minimum	µg/l	7.76
December 2010	Average	µg/l	8.925
December 2010	Maximum	µg/l	10.09
January 2011	Minimum	µg/l	8.33
January 2011	Average	µg/l	8.74
January 2011	Maximum	µg/l	9.15
February 2011	Minimum	µg/l	11.58
February 2011	Average	µg/l	14.4
February 2011	Maximum	µg/l	17.22
March 2011	Minimum	µg/l	10.88
March 2011	Average	µg/l	11.655
March 2011	Maximum	µg/l	12.43
April 2011	Minimum	µg/l	11.5
April 2011	Average	µg/l	12.51
April 2011	Maximum	µg/l	13.52
May 2011	Minimum	µg/l	10.69
May 2011	Average	µg/l	15.74
May 2011	Maximum	µg/l	20.79
June 2011	Minimum	µg/l	0.24
June 2011	Average	µg/l	7.805
June 2011	Maximum	µg/l	15.37
July 2011	Minimum	µg/l	5.9
July 2011	Average	µg/l	6.99

July 2011	Maximum	µg/l	8.08
August 2011	Minimum	µg/l	5.38
August 2011	Average	µg/l	6.825
August 2011	Maximum	µg/l	8.24
September 2011	Minimum	µg/l	8.34
September 2011	Average	µg/l	9.735
September 2011	Maximum	µg/l	11.13
October 2011	Minimum	µg/l	0.24
October 2011	Average	µg/l	6.91
October 2011	Maximum	µg/l	13.58
November 2011	Minimum	µg/l	9.28
November 2011	Average	µg/l	11.57
November 2011	Maximum	µg/l	13.86
December 2011	Minimum	µg/l	16.38
December 2011	Average	µg/l	17.16
December 2011	Maximum	µg/l	17.94
January 2012	Minimum	µg/l	10.35
January 2012	Average	µg/l	13.025
January 2012	Maximum	µg/l	15.7
February 2012	Minimum	µg/l	11.35
February 2012	Average	µg/l	11.395
February 2012	Maximum	µg/l	11.44
March 2012	Minimum	µg/l	12.64
March 2012	Average	µg/l	13.6
March 2012	Maximum	µg/l	14.56

INSTREAM MONITORING POINT P-11 (DRFLC)

DATE	TYPE	UNITS	MEASURED VALUE
July 2008	Minimum	µg/l	5.05
July 2008	Average	µg/l	5.135
July 2008	Maximum	µg/l	5.22
December 2008	Minimum	µg/l	7.99
December 2008	Average	µg/l	8.165
December 2008	Maximum	µg/l	8.34
January 2009	Minimum	µg/l	4.11
January 2009	Average	µg/l	6.585
January 2009	Maximum	µg/l	9.06
February 2009	Minimum	µg/l	5.24
February 2009	Average	µg/l	6.445
February 2009	Maximum	µg/l	7.65
March 2009	Minimum	µg/l	4.29
March 2009	Average	µg/l	5.73
March 2009	Maximum	µg/l	7.04
April 2009	Minimum	µg/l	6.45
April 2009	Average	µg/l	7.0933
April 2009	Maximum	µg/l	8.38
May 2009	Minimum	µg/l	4.76
May 2009	Average	µg/l	5.2067
May 2009	Maximum	µg/l	6.1
June 2009	Minimum	µg/l	6.24
June 2009	Average	µg/l	6.365
June 2009	Maximum	µg/l	6.49
July 2009	Minimum	µg/l	5.2
July 2009	Average	µg/l	5.2
July 2009	Maximum	µg/l	5.2
August 2009	Minimum	µg/l	5.52

August 2009	Average	µg/l	6.9467
August 2009	Maximum	µg/l	7.66
September 2009	Minimum	µg/l	7.69
September 2009	Average	µg/l	7.815
September 2009	Maximum	µg/l	7.94
October 2009	Minimum	µg/l	3.37
October 2009	Average	µg/l	7.985
October 2009	Maximum	µg/l	12.6
December 2009	Minimum	µg/l	6.92
December 2009	Average	µg/l	8.42
December 2009	Maximum	µg/l	9.92
January 2010	Minimum	µg/l	4.15
January 2010	Average	µg/l	13.275
January 2010	Maximum	µg/l	22.4
February 2010	Minimum	µg/l	6.68
February 2010	Average	µg/l	7.03
February 2010	Maximum	µg/l	7.38
March 2010	Minimum	µg/l	7.86
March 2010	Average	µg/l	8.245
March 2010	Maximum	µg/l	8.63
April 2010	Minimum	µg/l	7.17
April 2010	Average	µg/l	11.335
April 2010	Maximum	µg/l	15.5
May 2010	Minimum	µg/l	7.77
May 2010	Average	µg/l	8.475
May 2010	Maximum	µg/l	9.18
June 2010	Minimum	µg/l	6.84
June 2010	Average	µg/l	6.89
June 2010	Maximum	µg/l	6.94
December 2010	Minimum	µg/l	6.09
December 2010	Average	µg/l	8.33
December 2010	Maximum	µg/l	10.57
January 2011	Minimum	µg/l	6.13
January 2011	Average	µg/l	7.375
January 2011	Maximum	µg/l	8.62
February 2011	Minimum	µg/l	8.27
February 2011	Average	µg/l	10.93
February 2011	Maximum	µg/l	13.59
March 2011	Minimum	µg/l	6.52
March 2011	Average	µg/l	7.535
March 2011	Maximum	µg/l	8.55
April 2011	Minimum	µg/l	8.13
April 2011	Average	µg/l	8.795
April 2011	Maximum	µg/l	9.46
May 2011	Minimum	µg/l	8.98
May 2011	Average	µg/l	11.62
May 2011	Maximum	µg/l	14.26
June 2011	Minimum	µg/l	7.17
June 2011	Average	µg/l	9.92
June 2011	Maximum	µg/l	12.67
July 2011	Minimum	µg/l	5.79
July 2011	Average	µg/l	6.675
July 2011	Maximum	µg/l	7.56
August 2011	Minimum	µg/l	5.76
August 2011	Average	µg/l	6.71
August 2011	Maximum	µg/l	7.66
September 2011	Minimum	µg/l	6.81
September 2011	Average	µg/l	7.945

September 2011	Maximum	µg/l	9.08
October 2011	Minimum	µg/l	2.87
October 2011	Average	µg/l	7.135
October 2011	Maximum	µg/l	11.4
November 2011	Minimum	µg/l	4.21
November 2011	Average	µg/l	7.86
November 2011	Maximum	µg/l	11.51
December 2011	Minimum	µg/l	11.94
December 2011	Average	µg/l	12.61
December 2011	Maximum	µg/l	13.28
January 2012	Minimum	µg/l	6.32
January 2012	Average	µg/l	9.43
January 2012	Maximum	µg/l	12.54
February 2012	Minimum	µg/l	11.35
February 2012	Average	µg/l	11.395
February 2012	Maximum	µg/l	11.44
March 2012	Minimum	µg/l	9.43
March 2012	Average	µg/l	9.945
March 2012	Maximum	µg/l	10.46

INSTREAM MONITORING POINT P-12 (DLC)

DATE	TYPE	UNITS	MEASURED VALUE
July 2008	Minimum	µg/l	5.62
July 2008	Average	µg/l	6.37
July 2008	Maximum	µg/l	7.12
November 2008	Minimum	µg/l	5.06
November 2008	Average	µg/l	7.03
November 2008	Maximum	µg/l	9
December 2008	Minimum	µg/l	3.04
December 2008	Average	µg/l	5.185
December 2008	Maximum	µg/l	7.33
January 2009	Maximum	µg/l	6.06
February 2009	Minimum	µg/l	5.64
February 2009	Average	µg/l	7.03
February 2009	Maximum	µg/l	8.42
March 2009	Minimum	µg/l	4.6
March 2009	Average	µg/l	5.1433
March 2009	Maximum	µg/l	5.86
April 2009	Minimum	µg/l	4.11
April 2009	Average	µg/l	5.67
April 2009	Maximum	µg/l	7.23
May 2009	Minimum	µg/l	3.7
May 2009	Average	µg/l	5.77
May 2009	Maximum	µg/l	7.84
June 2009	Minimum	µg/l	5.47
June 2009	Average	µg/l	6.61
June 2009	Maximum	µg/l	7.75
July 2009	Minimum	µg/l	8.56
July 2009	Average	µg/l	9.05
July 2009	Maximum	µg/l	9.54
August 2009	Maximum	µg/l	5.5
September 2009	Minimum	µg/l	5.55
September 2009	Average	µg/l	6.91
September 2009	Maximum	µg/l	8.27
October 2009	Minimum	µg/l	3.04
October 2009	Average	µg/l	10.92

October 2009	Maximum	µg/l	18.8
December 2009	Maximum	µg/l	6.55
January 2010	Minimum	µg/l	2.53
January 2010	Average	µg/l	7.465
January 2010	Maximum	µg/l	12.4
February 2010	Maximum	µg/l	5.27
April 2010	Minimum	µg/l	4.98
April 2010	Average	µg/l	10.99
April 2010	Maximum	µg/l	17
June 2010	Minimum	µg/l	4.46
June 2010	Average	µg/l	6.065
June 2010	Maximum	µg/l	7.67
July 2010	Maximum	µg/l	5.65
September 2010	Maximum	µg/l	5.56
October 2010	Minimum	µg/l	4.87
October 2010	Average	µg/l	5.155
October 2010	Maximum	µg/l	5.44
December 2010	Minimum	µg/l	4.5
December 2010	Average	µg/l	6.79
December 2010	Maximum	µg/l	9.08
January 2011	Maximum	µg/l	6
February 2011	Minimum	µg/l	3.53
February 2011	Average	µg/l	5.015
February 2011	Maximum	µg/l	6.5
January 2012	Maximum	µg/l	5.33

APPENDIX B

Date Sampled	Sampler	Sampling Location	Total Se ug/l Method 200.8
03/22/12	Downstream Strategies	WV1013815 022	8.43
03/22/12	WVDEP	WV1013815 022	9.26
03/22/12	Downstream Strategies	WV1013815 027	17.57
03/22/12	WVDEP	WV1013815 027	17.90
03/22/12	Downstream Strategies	WV1017934 009	7.88
03/22/12	WVDEP	WV1017934 009	7.17
03/22/12	Downstream Strategies	P-12 (DLC)	5.22
03/22/12	WVDEP	P-12 (DLC)	5.14
03/22/12	Downstream Strategies	P-11 (DRFLC)	9.01
03/22/12	WVDEP	P-11 (DRFLC)	9.48
03/22/12	Downstream Strategies	P-10 (DRFLC)	15.61
03/22/12	WVDEP	P-10 (DRFLC)	13.4
03/22/12	Downstream Strategies	P-9 (DCCH)	32.08
03/22/12	WVDEP	P-9 (DCCH)	22.20
5/1/12	WVDEP	WV1013815 023	8.78